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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,364	12/06/2004	Juan Luis De La Fuente Moreno	U 015302-3	7575
¹⁴⁰ LADAS & PAF	7590 03/12/2007 RRY		EXAMINER	
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NEW YORK, NY 10023			ART UNIT	PAPER NUMBER
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SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Learnance of many by a swinder with the provision of 30° RT 1:180°, in no event, however, may a reply be sinely filed If NO period for regly is specified above, the maximum statutory periods will apply and will expire SIX (8) MONTHS from the mailing date of this communication of the regly is specified above, the maximum statutory periods will apply and will expire SIX (8) MONTHS from the mailing date of this communication. Part of the communication of the communication of the size of the communication, even if simily filed, may reduce any seamed part time an plagrament. See 77 GFR 1:74(8) Status 1) Responsive to communication (s) filed on 06 December 2004. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-27 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are allowed. 6) Claim(s) is/are allowed. 7) Claim(s) is/are objected to. 8) Claim(s) 7-27 are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) because the statement of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 2a) All by Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 2a) All by Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). 2a) Copies of the certified copies of the priority documents have been received in Application No. 2 Certified copies of the priority documents have been received in this National Stage applicati		Application No.	Applicant(s)	·			
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WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 ER1 1-18[6]. In ne event, however, may a reply be sinely fied after SIX (6) MONTHS from the mailing date of this communication. Failur be reply within the set or received period for rejival, they also play and will explic SIX (6) MONTHS from the mailing date of this communication, and apply and will explic SIX (6) MONTHS from the mailing date of this communication, which is provided by the Diffes before the white mailing date of this communication, even if timely filed, may reduce any seamed patent time algustrant. See 37 CFR 1.79(b). Status 1) Responsive to communication(s) filed on 06 December 2004. 2a) This action is FINAL. 2b) This action is non-final. 3] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-2Z is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are rejected. 7) Claim(s) is/are rejected. 7) Claim(s) is/are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in absyrace. See 37 CFR 1.121(d). 11) The cath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) Mone of: 1. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in Application No. 4. Certified copies o	The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence ad	dress			
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DETAILED ACTION

Claims 1-27 as amended (preliminary amendment 12//06/2004) are pending and subject to restriction requirement.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-5, drawn to a method of obtaining an astaxanthin overproducing strain of *Xanthophyllomyces dendrorhous* under mutagenic conditions.

Group II, claim(s) 6 and 7, drawn to an astaxanthin overproducing strain of Xanthophyllomyces dendrorhous.

Group III, claim(s) 8-23, drawn to a method for producing astaxanthin by using an astaxanthin overproducing strain of *Xanthophyllomyces dendrorhous*.

Group IV, claim(s) 24-27, drawn to a biomass with nutrient and pigmenting value obtained by fermentation of an astaxanthin overproducing strain of *Xanthophyllomyces* dendrorhous.

The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Page 3

Art Unit: 1657

A "special technical feature" (that defines a contribution which each of the claimed inventions, considered as a whole, makes over the prior art) is known in the prior art. For example: US 6,869,773 discloses the astaxanthin overproducing strains of *Xanthophyllomyces dendrorhous* (same as *Phaffia rhodozyma*, see col. 1, lines 26-34) that are obtained by conventional mutagenesis (col.1, lines 35-39) or by recombinant technologies (col.18, table 4).

Thus, unity of inventions is lacking. See MPEP 1850. 37 CFR 1.475.

37 CFR 1.475. Unity of invention before the International Searching Authority, the International Preliminary Examining Authority and during the national stage.

- (a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.
- (b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:
- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and a process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.
- (c) If an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.
- (d) If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) and § 1.476(c).
- (e) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

Application/Control Number: 10/501,364

Art Unit: 1657

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (571) 272-0914. The examiner can normally be reached from Monday to Friday from 9.30 am to 6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon P. Weber, can be reached at (571) 272-0925.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (571) 273-8300.

Art Unit: 1657

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology center 1600, telephone number is (571) 272-1600.

Vera Afremova

AU 1657

March 7, 2007

VERA AFREMOVA

V. Afrenou

PRIMARY EXAMINER